

FLORIDA'S DEPENDENCY BENCHBOOK

BENCHCARD: PERMANENCY HEARING

Items in **bold font** are required by Florida Statutes.

NOTE: HOLD THESE HEARINGS NO LATER THAN 12 MONTHS AFTER DATE OF REMOVAL OR 30 DAYS AFTER COURT DETERMINES REASONABLE EFFORTS TO RETURN CHILD TO PARENT NOT REQUIRED, WHICHEVER IS FIRST.

WHEN CONDUCTING A HEARING TO TERMINATE SUPERVISION, BE SURE THAT ALL CHILD SUPPORT, VISITATION, AND CUSTODY ISSUES ARE RESOLVED. RETAIN JURISDICTION IF NOT RESOLVED.

Introductory remarks.

- Explain purpose of the hearing. State when the child will achieve the current permanency goal or whether it is in the best interests of the child for the goal to be modified. State the number of days the child has been in care and the number of placements to date.
- Swear in the parties, participants, and relatives. (*See Parties and Participants, Section 8*)

Representation and appointment of counsel.

- **If parents do not have counsel, advise parents of right to legal counsel. § 39.701(b). The offer of counsel must be renewed at every hearing. § 39.013(9).**
- **Ascertain whether the right to counsel is understood. § 39.013(9)(a).**
- If parents request counsel and claim to be indigent, have parents fill out affidavit for indigence. **If indigent per affidavit and the parents request it, appoint counsel for parents. § 39.013(9)(a).**
- If counsel is waived it must be on the record. Rule 8.320(b)(2). **Determine if waiver is made knowingly, intelligently, and voluntarily. § 39.013(9)(a).**
- If parents are ineligible for the appointment of counsel or knowingly, intelligently and voluntarily waive appointed counsel, ask if they want to proceed pro se or hire a private attorney. Explain “pro se” if necessary.
- Follow circuit plan (developed by the chief judge) so that orders appointing counsel are entered on an expedited basis.

Parties and notices.

- **Have all parties identify themselves for the record with full name and permanent address. § 39.0131. See also §§ 39.402(8)(g) & 39.506(4).** (Note: Do not openly identify the address when one or more of the parents is party to an injunction for protection against domestic violence.)
- Advise parties that the court will use the address for notice purposes until notified otherwise in writing.

- **If child, parents, legal custodians, caregivers, or relatives who requested notice are absent, confirm that they were properly noticed. If parent is absent and has not been served, inquire about the diligent search. §§ 39.402(5)(a) & 39.502(1). (See *Service, Section 8*)**
- **Make findings on the record of whether each caregiver did or did not receive actual notice of the hearing; whether each caregiver is present, either in person or remotely; and, if possible, the reasons why any caregivers are not present.**
- **Provide each caregiver a meaningful opportunity to be heard and provide input to the court and to address the court with any information relevant to the best interests of the child. § 39.502(17) & 39.701(2)(b)3.**
- **For all relatives who requested notification pursuant to § 39.301(14)(b), inquire whether each such relative has a report to submit to the court or desires to speak to the court regarding the child. § 39.502(19).**
- **Require a thorough description of DCF's efforts to locate and advise any absent parent of the hearing and confirm that a diligent search was begun by DCF. If needed, ask parents if any other individuals should be involved in the court matter, or who else is significant in the child's life.**
- **Conduct a paternity inquiry if still in dispute. If a parent has not legally established paternity, DNA testing should be ordered after proper inquiry, applying *Privette* principles as appropriate. § 39.822(1); Rule 8.215. If necessary, examine birth certificate or inquire as to marriage status. (See *Paternity in Dependency Cases, Section 3*)**
- **Appoint Guardian ad Litem Program to represent the best interests of the child if it has not yet been appointed. § 39.402(8)(c); Rule 8.215. (See *Guardian ad Litem, Section 4*)**
- **If the child is eligible for membership in a federally recognized tribe, confirm that DCF notified the tribe pursuant to the Indian Child Welfare Act. (See *Indian Child Welfare Act, Section 7*)**
- **Ask the parents if they are involved in any other past or pending family law, paternity, domestic violence, delinquency, or child support cases other than those previously disclosed. (See *Dependency in the Context of Unified Family Court, Section 2*)**
- **Verify timely compliance with all ICPC requirements. (See *Interstate Compact on the Placement of Children, Section 7*)**

Determine whether DCF has made reasonable efforts to finalize a permanency plan.

- **Findings must be explicitly documented, made on a case by case basis, and include specific relevant facts about the case. 45 C.F.R. § 1356.21(d), § 39.621(8). See *Making Sense of ASFA Regulations*, p. 33, Baker, et. al, 2000.**
- **Ask the case worker if all necessary internal staffings have been held and particularly prior to making a recommendation of reunification, TPR, or another permanency option.**

- If the goal of TPR is announced, order DCF to obtain birth certificates and other necessary documents needed for adoption proceedings.
- Ensure that the staffings include relevant family members, custodians, GALs, attorneys, treatment providers, and tribal services staff (if applicable).
- If the child was assessed for placement in a safe house pursuant to § 409.1754(1), the results of that assessment, the multidisciplinary staffing described in § 409.1754(2), and the actions taken as a result of the assessment must be included in the disposition hearing or next judicial review of the child. At each subsequent judicial review, the court must be advised in writing of the status of the child's placement, with special reference regarding the stability of the placement, any specialized services, and the permanency planning for the child. § 39.524(2).

Make permanency determinations.

- If a concurrent case plan is in place, the court may choose between the permanency goal options presented and shall approve the goal that is in the child's best interest. § 39.621(9). (*See Concurrent Case Planning Model, Section 4*)
 - Choose whether the goal will be: reunification, adoption, permanent guardianship, permanent placement with a fit and willing relative, or placement in another planned permanent living arrangement (APPLA). § 39.621(9).
 - Verify that the case plan lists the tasks necessary to finalize the permanency placement and has been updated for the permanency hearing if necessary. § 39.621(9).
 - If the goal approved by the court is NOT reunification and adoption won't follow, findings as to why are required. If APPLA then they must be compelling. § 39.621(7). (*See Adoption and Safe Families Act, Section 7 and Another Planned Permanent Living Arrangement in the Case Plan Approval Benchcard Section*)
- If the court determines that reunification is not a viable alternative, and prior to the filing of the petition for termination of parental rights, it shall advise the parents of the availability of private placement of the child with an adoption entity as defined in § 63.032. §§ 39.802(4)(d) & 63.082(6)(g); Rule 8.255(i).
- Order DCF and CBC to file a written motion and proposed order before the child changes placement. If it is impossible to provide notification before a placement change, DCF and the CBC should file notification immediately following the change. Ensure the GAL is involved with the placement decision. Emergency hearings should be scheduled if court declines to act *ex parte* or desires to review the placement change with input from the parent(s), caretaker, and GAL. (*See Placement Stability Considerations, Section 4*)
- Review appropriate school records, including any Individualized Education Plan (IEP). (*See Educational Considerations, Section 5*)
- Advise the parent that he or she has a continuing duty to inform DCF of any relative who should be considered for placement of the child. § 39.402(17).

Provide written notice of the right to participate in a private adoption plan.

- At the arraignment hearing held pursuant to § 39.506, in the order that approves the case plan pursuant to § 39.603, and in the order that changes the permanency goal to adoption pursuant to § 39.621, the court shall provide written notice to the biological parent who is a party to the case of his or her right to participate in a private adoption plan including written notice of the factors provided in § 63.082(6)(e). § 63.082(6)(g).

Review the child's placement.

- Determine if safety is still an issue. Consider reunification when the circumstances that caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child's remaining with or being returned to the child's parent. (*See American Bar Association Safety Guide, Section 6*)
- Ask what changes, if any, have been made to the child's living arrangement and/or placement since the last hearing. If there has been a change, ask if the change is necessary to achieve the child's permanency goal or meet the child's service needs. (*See Placement Stability Considerations, Section 4*)
- One purpose of Chapter 39 is to make every possible effort, if two or more children who are in the care or under the supervision of the department are siblings, to place the siblings in the same home; and in the event of permanent placement of the siblings, to place them in the same adoptive home or, if the siblings are separated while under the care of the department or in a permanent placement, to keep them in contact with each other. § 39.001(1)(k).
- Verify that the case worker advised the child and the individuals with whom the child will be placed of the availability of more permanent and legally secure placements and the type of financial assistance is associated with each placement. § 39.621(4)(b).
- Verify that the caregiver is willing and able to meet the needs of the child.
- Inquire of the child, caregiver, GAL, and case worker of any issues with the current placement.
- Consider the child's reasonable preference if the child is of sufficient intelligence, understanding, and experience to express a preference. Conduct an age-appropriate consultation with the child during a permanency hearing. § 39.621(6)(a). (*See Children in Court, Section 4*)
- If siblings are not placed together, determine why not, and ask about efforts made (when appropriate) to keep them together. Ensure continuing contact between siblings (when appropriate) when they are not placed together.
- Determine the frequency, kind, and duration of contacts among siblings who have been separated during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interest of the child. § 39.701(2)(c)(7); Rule 8.415(f)(1).

- Determine if concurrent planning is appropriate based on the facts of the case. If adoption is a permanency option, verify that adoption home studies have been completed. Also, verify that the case worker has produced necessary adoption documents. (*See Concurrent Case Planning Model, Section 4*)
- If the case involves domestic violence, ensure safety provisions exist, the placement is appropriate to protect the child, safety plan compliance, and visitation practices are adequate to protect the child. (*See Domestic Violence and the Effects on Children, Section 3*)

Review family time (visitation). (*See Family Time Protocols, Section 4 and Co-Parenting, Section 4*)

- Reassess the type, frequency, duration, and quality of family time (visitation). At a minimum, several hours a week of visitation is needed for the purposes of bonding. Get input from all parties/participants including child and caregiver.
- Consider who should supervise: a visitation center, a case worker, or an approved third party.
- Outline incentives to gradually increase visits or reduce limits (such as overnights). Indicate if DCF is given discretion to increase (and whether this includes up to “reunification”) or is automatic upon proof of satisfying the announced incentive (such as approved housing, or completion of a specified case plan task).
- **If a child is placed in permanent guardianship, the court must specify the frequency and nature of visitation between the child and the child’s parents (§ 39.6221(2)(c)), the child’s grandparents (§ 39.6221(2)(d)), and the child’s siblings (§ 39.6221(2)(e)), in the written order.**
- Inquire if transportation has been an issue and determine who has been present and participated in the visits.
- Ensure that there is ongoing supporting documentation regarding the frequency, quality, and progress of the visitation.
- Verify that the visitation is consistent to meet the developmental, emotional, and mental needs of the child.
- **If siblings are unable to be placed together, verify sibling visitation is occurring. § 39.4085(15). DCF must make reasonable efforts to provide frequent sibling visitation, even with previously adopted siblings.**
- **Determine the frequency, kind, and duration of contacts among siblings who have been separated during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interest of the child. § 39.701(2)(c)(7); Rule 8.415(f)(1).**
- If visitation is not possible because of the distance of the parent, the court should specify what alternative forms of contact are permitted (such as phone, email, webcam, or video conferencing).

- If the case involves domestic violence, ensure visitation practices are adequate to protect the child. (*See Domestic Violence and the Effects on Children, Section 3*)

Address the needs of the child.

- Verify that the child's mental, physical, and dental healthcare needs have been addressed. Get input from all parties/participants, including the child and caregiver. (*See Health Considerations, Section 5*)
- Verify that the parents are participating in the child's medical and educational appointments. (*See Family Time Protocols, Section 4 and Co-Parenting, Section 4*)
- Ask the child if there are any other individuals who should be present at this hearing or at future hearings.
- Review individual appropriate school records including any individualized education plan. If an educational surrogate parent has been appointed, the educational surrogate parent should report to the court as appropriate. (*See Educational Considerations, Section 5*)
- Verify that the child is attending school on a regular basis and has adequate school supplies and transportation.
- Verify that the child is attending the same school as when he or she first entered care. If not, verify what has been done to ease the transition.
- Appoint an attorney to represent the child with special needs as required by Rule 8.231, and who is not already represented by an attorney. Rule 8.415(f)(5).
- Order child support, if not already ordered. If already ordered, review compliance. (*See Child Support in Dependency Cases, Section 3*)

Retention of jurisdiction.

Note: See §§ 39.013(2) & 39.5075(6).

- If a child has been adjudicated dependent, the court retains jurisdiction unless relinquished by its order, until the child reaches 21 years of age, or 22 years of age if the child has a disability, with the following exceptions:
 - If a young adult chooses to leave foster care upon reaching 18 years of age. § 39.013(2)(a);
 - If a young adult does not meet the eligibility requirements to remain in foster care under § 39.6251 or chooses to leave care under that section. § 39.013(2)(b);
 - If a young adult petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the court may retain jurisdiction for up to a year following the young adult's 18th birthday for the purpose of determining whether appropriate services, that were required to be provided to the young adult before reaching 18 years of age, have been provided. § 39.013(2)(c);
 - If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted. § 39.013(2)(d).

Set the next hearing.

- **Schedule the judicial review within 6 months. After the child's 17th birthday, schedule within 90 days and set status reviews between judicial reviews until the 18th birthday. § 39.701(3)(a).**
- When setting non-TPR hearings, be cognizant of counsels' TPR hearings that are scheduled before other judges and defer to those TPR hearings.
- Provide hand written notices of the next hearing at the conclusion of every hearing. **Order the DCF attorneys to provide notice to caregivers of the next court hearing if caregivers are not in court and to any relative who requested notification of all hearings. § 39.502(19). See also §§ 39.301(14)(b) & 39.502(17).**
- If proceeding to TPR, set advisory and caution parents who are present of legal consequences of non-appearance.
- Ask if the child had difficulty attending the hearing. Facilitate telephonic or video conferencing if necessary. (*See Children in Court, Section 4*)

Complete a written order.

PERMANENCY HEARING SUPPLEMENT

➤ **Generally.**

What must I make determinations about at a permanency hearing? The court shall determine:

- Whether the current permanency goal for the child is appropriate or should be changed, 39.621(5)(a);
- When the child will achieve one of the permanency goals, § 39.621(5)(b); and
- Whether DCF has made reasonable efforts to finalize the permanency plan currently in effect. § 39.621(5)(c).

A permanency hearing is required:

- Within 12 months of the child's removal, or

- Within 30 days of a judicial determination that reasonable efforts to reunify are not required. 42 U.S.C. § 671(a)(15)(E).
- After the initial permanency hearing, subsequent permanency hearings must be held every 12 months while the child is in care. *See* 45 C.F.R. § 1356.21(b)(2)(i).
- The court may hold permanency hearings at any time.

Should permanency hearings be open to parents, foster parents, the child, and pre-adoptive parents at a minimum? Yes. 45 C.F.R. § 1356.21(o).

Must I determine whether DCF has made reasonable efforts to finalize the permanency plan that is in effect? Yes, a full hearing is required. The court must make a determination of whether DCF has made reasonable efforts to finalize the permanency plan in effect. 45 C.F.R. § 1356.21(b)(2)(i). A failure by the court to make the findings that reasonable efforts were made to finalize the permanency plan within the 12-month period can result in the loss of payment for the child's stay in foster care. 45 C.F.R. § 1356.21(b)(2)(ii).

Should I make a determination about reasonable efforts by DCF prior to the permanency meeting? No. The finding of reasonable efforts is based on the permanency plan at the time of the hearing. 45 C.F.R. § 1356.21(b)(2)(i); *See also*, Making Sense of ASFA Regulations, Baker, et. al, 2000.

Does DCF need to wait until the permanency hearing or get court approval to change a child's permanency plan prior to the first permanency hearing? No. 65 Fed. Reg. 4052.

What should my paramount concern be when determining whether DCF has made reasonable efforts to finalize the permanency plan that is in effect? The child's health and safety must be the paramount concern. 45 C.F.R. § 1356.21(b).

Does my determination regarding DCF's efforts to finalize a permanency plan directly affect the decision regarding the child's return home? No. [Making it Permanent, Fiermonte and Renne, 2002](#).

- Burden is on DCF to prove reasonable efforts. 65 Fed. Reg. 4051.

A finding of reasonable efforts to finalize the permanency plan may encompass reasonable efforts to reunify the family following placement in foster care or reasonable efforts to make and finalize alternate permanency plans when reunification is no longer appropriate or possible. 45 C.F.R. § 1356.21(b)(2)(i). *See* [Making Sense of ASFA Regulations](#), p.32, Baker, et. al, 2000.

How do I provide detailed findings? There are a number of ways to provide detailed findings, including:

- Describing the efforts in the language of the court order or findings;
- Using language in the court order that cross-references or refers specifically to detailed statements in an agency or other report submitted to the court;
- Using language in the court order that cross-references a sustained petition; or

- Checking off items from a detailed checklist. See 65 Fed. Reg. 4056.

Note: Affidavits and nunc pro tunc orders regarding reasonable efforts to finalize a permanency plan are not acceptable. 45 C.F.R. § 1356.21(d)(2).

➤ **Representation and appointment of counsel.**

What do I need to do with regard to representation and/or appointment of counsel? See section in shelter hearing supplement titled, “Representation and appointment of counsel.”

What should I do after swearing in the parties? The court shall advise parents of the right to counsel, ascertain whether the right to counsel is understood, and appoint counsel for parents who qualify as indigent. §§ 39.013(9), 39.013(9)(a).

➤ **Adoption.**

What is the preferred legal option under ASFA and Florida law when a child cannot safely return home? Adoption is the preferred legal option under ASFA and Florida law. § 39.621(3)(b).

When is DCF required to file a TPR petition? DCF is required to file a TPR petition within 60 days of any of the following:

- If the child is not returned to the physical custody of the parents 12 months after the child was sheltered or adjudicated dependent, whichever occurs first, § 39.8055(1)(a);
- If the child has been in out-of-home care under the responsibility of the state for 12 of the most recent 22 months, calculated on a cumulative basis, but not including any trial home visits or time during which the child was a runaway, § 39.8055(1)(b);
- If a parent has been convicted of the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent, or another child of the parent, or of a felony battery that resulted in serious bodily injury to the child or to another child of the parent, § 39.8055(1)(c); or
- If the court determines that reasonable efforts to reunify the child and parent are not required. § 39.8055(1)(d).

See Termination of parental rights adjudicatory hearing benchcard and supplement for more requirements.

May DCF choose not to file a TPR petition? Yes. Notwithstanding § 39.8055(1), DCF may choose not to file or join a TPR petition if any of the conditions under § 39.8055(2)(b)(1)-(5) exist. Therefore, DCF may choose *not* to file or join a TPR petition if:

- The child is being cared for by a relative under § 39.6231, § 39.8055(2)(a); or
- DCF has documented in the report to the court a compelling reason for determining that filing such a petition is not in the best interest of the child. Compelling reasons for not filing or joining a TPR petition include, but are not limited to:
 - Adoption is not the appropriate permanency goal for the child, § 39.8055(2)(b)(1);
 - No grounds to file the TPR petition exist, § 39.8055(2)(b)(2);

- The child is an unaccompanied refugee minor as defined in 45 C.F.R. 400.111, § 39.8055(2)(b)(3); or
 - There are international legal obligations or compelling foreign-policy reasons that would preclude terminating parental rights, § 39.8055(2)(b)(4); or
 - DCF has not provided to the family consistent with the time period in the case plan services that it deems necessary for the safe return of the child to the home. § 39.8055(2)(b)(5).
- Upon good cause shown by any party or on its own motion, the court may review the decision by DCF that compelling reasons exist for not filing or joining a TPR petition. § 39.8055(3).

Judges may wish to schedule a status conference following the permanency hearing to monitor DCF's filing of a TPR petition.

Note: The court which terminates the parental rights of a child under Chapter 39 shall retain exclusive jurisdiction over the child's adoption under Chapter 63. § 39.813.

Options for permanency in order of preference are listed below. Also, information about each type of permanency can be found below under each type.

ASFA- 45 C.F.R. § 1355.20.	§ 39.621(3).
Reunification	Reunification. § 39.621(3)(a).
Adoption	Adoption, if a petition for termination of parental rights has been or will be filed. § 39.621(3)(b).
Guardianship	Permanent guardianship of a dependent child under § 39.6221. § 39.621(3)(c).
Placement with a Relative	Permanent placement with a fit and willing relative under § 39.6231. § 39.621(3)(d).
Another Planned Permanent Living Arrangement (APPLA) Requires findings of compelling reasons.	Another Planned Permanent Living Arrangement. § 39.621(3)(e). Requires additional findings per § 39.6241 and findings of compelling reasons.

➤ **Reunification.**

May the court order reunification at the permanency hearing if certain conditions are met? Yes. If the following conditions are met, the court may order reunification:

- If the court finds that the prevention or reunification efforts of DCF will allow the child to remain safely at home or be safely returned to the home, the court shall allow the child to remain in or return to the home after making a specific finding of fact that the reasons for the creation of the case plan have been remedied to the extent that the child's safety, well-being, and physical, mental and emotional health will not be endangered. § 39.701(2)(d)(1).
- The court shall return the child to the custody of the parents at any time it determines that they have substantially complied with the case plan, and if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health. § 39.701(2)(d)(2).
- The court shall base its decision concerning any motion by a parent for reunification or increased contact with a child on the effect of the decision on the safety, well-being, and physical and emotional health of the child. Factors that must be considered and addressed in the findings of fact of the order on the motion must include:
 - The compliance or noncompliance of the parent with the case plan, § 39.621(11)(a);

- The circumstances which caused the child's dependency and whether those circumstances have been resolved, § 39.621(11)(b);
 - The stability and longevity of the child's placement, § 39.621(11)(c);
 - The preference of the child, if the child is of sufficient age and understanding to express a preference, § 39.621(11)(d);
 - The recommendation of the current custodian, § 39.621(11)(e); and
 - The recommendation of the guardian ad litem, if one has been appointed. § 39.621(11)(f).
- If a party objects to a proposed amendment to the case plan rejecting the goal of reunification, an evidentiary hearing must be held to determine whether the need for the amendment is established by the preponderance of evidence." K.E. v. Department of Children and Families, 958 So. 2d 968, 973 (Fla. 5th DCA 2007)(citations omitted)(reversing order terminating jurisdiction and order of permanent placement with the father, from whom the child was not originally removed).
 - The court shall retain jurisdiction over a child returned to his or her parents for a minimum period of 6 months following reunification, but at that time, based on a report of the social service agency and the GAL (if one has been appointed) and any other relevant factors, the court shall make a determination as to whether supervision by DCF and the court's jurisdiction shall continue or be terminated. § 39.701(1)(b).

What if the court determines that reunification is not a viable alternative? If the court determines that reunification is not a viable alternative, prior to the filing of the petition for termination of parental rights, it shall advise the parents of the availability of private placement of the child with an adoption entity as defined in § 63.032. §§ 39.802(4)(d) & 63.082(6)(g); Rule 8.255(i).

Examples of considerations in determining whether DCF made reasonable efforts to finalize a permanency plan of reunification:

- Inquiring of DCF what specific problem required initial removal and establish: What specific steps has DCF taken since removal to offer assistance? (ex. housing assistance, income assistance, preventive services, casework support, day care, mental health counseling, substance abuse treatment and monitoring)
- If such assistance is not now in place, why not?
- Are the child's needs keeping him or her from returning to the parents? (Are there services that could be put in place to allow the child to live safely with the parent?)
- Is reunification with either parent appropriate?
- Have all services to the parents been explored and offered?
- Are continuing reunification efforts warranted?
- Has all relevant information regarding the case been collected and provided to the court?

➤ **Adoption.**

Must the court require a relative of the child or a relative of the child's half-brother or half-sister with whom the child is placed to be a permanency option to adopt the child?

No. If a child will not be reunited with a parent, adoption (under Chapter 63) is the primary permanency option. However, if the child is placed with a relative or with a relative of the child's half-brother or half-sister as a permanency option, the court may recognize the permanency of this placement without requiring the relative to adopt the child.

If the parents' rights have been terminated, siblings should also be placed together for adoption. §§ 63.022(3), 39.001(k). If previous siblings have already been adopted, then the newly available sibling should be placed with the same adoptive family. §§ 39.401(2)(a)(3), 39.401(3)(b), 39.521(3)(c). If no prior siblings were adopted, then the court and the CBC should make every effort to ensure that siblings are placed together in the same adoptive home.

§§ 63.022(3), 39.001(k). If DCF is forced to separate siblings despite diligent efforts, the court may order post-adoption communication or contact among the siblings. § 63.022(4)(m).

Must the court require a permanent guardianship, a placement with a fit and willing relative, or another planned permanent living arrangement, to adopt the child? No; however, the court shall make findings as to why this permanent placement is established without adoption of the child to follow.

What am I required to do if I approve a permanency goal of another planned permanent living arrangement? The court shall document the compelling reasons for choosing this goal. § 39.621(7).

Note: For procedures governing TPR proceedings, see termination of parental rights adjudicatory hearing benchcard and supplement.

➤ **Permanent guardianship of a dependent child.**

What is "Permanent guardianship of a dependent child"? It is a legal relationship that a court creates under § 39.6221 between a child and a relative or other adult approved by the court which is intended to be permanent and self-sustaining through the transfer of parental rights with respect to the child relating to protection, education, care and control of the person, custody of the person, and decision-making on behalf of the child. § 39.01(56).

If a court determines that reunification or adoption is not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court if all of the following conditions are met.

- The child has been in the placement for not less than the preceding 6 months, § 39.6221(1)(a);
- The permanent guardian is suitable and able to provide a safe and permanent home for the child, § 39.6221(1)(b);
- The court determines that the child and the relative or other adult are not likely to need supervision or services of DCF to ensure the stability of the permanent guardianship, § 39.6221(1)(c);
- The permanent guardian has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence; § 39.6221(1)(d); and
- The permanent guardian agrees to give notice of any change in his or her residential address or the residence of the child by filing a written document in the dependency file of the child with the clerk of the court, § 39.6221(1)(e).

Must I create a written order to establish permanent guardianship? Yes, the court order shall:

- List the circumstances or reasons why the child's parents are not fit to care for the child and why reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact, § 39.6221(2)(a);
- State the reasons why a permanent guardianship is being established instead of adoption, § 39.6221(2)(b);
- Specify the frequency and nature of visitation or contact between the child and his or her parents, § 39.6221(2)(c);
- Specify the frequency and nature of visitation or contact between the child and his or her grandparents under § 39.509, § 39.6221(2)(d);
- Specify the frequency and nature of visitation or contact between the child and his or her siblings, § 39.6221(2)(e); and
- Require that the permanent guardian not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court. § 39.6221(2)(f).

The court shall give the permanent guardian a separate order establishing the authority of the permanent guardian to care for the child, reciting what powers and duties listed in paragraph (2)(g) belong to the permanent guardian and providing any other information the court deems proper which can be provided to persons who are not parties to the proceeding as necessary, notwithstanding the confidentiality provisions of § 39.202. § 39.6221(3).

Do the requirements of § 61.13001 apply to a permanent guardianship of a dependent child established under Chapter 39? No. Section 39.6221 was amended to provide expressly that § 61.13001 does not apply. § 39.6221(7).

Is a permanent guardianship of a dependent child established under Chapter 39 a plenary guardianship that is subject to the requirements of Chapter 744? No. § 39.6221(4).

Should the court retain jurisdiction over the case of a permanent guardianship of a dependent child? Yes, and the child shall remain in the custody of the permanent guardian unless the order creating the permanent guardianship is modified by the court. The court shall discontinue regular review hearings and relieve DCF of the responsibility for supervising the placement of the child. Notwithstanding the retention of jurisdiction, the placement shall be considered permanency for the child. § 39.6221(5).

When considering guardianship, some of the advantages and disadvantages are:

Advantages

- Legal guardianship is sometimes better for relative caregivers when termination of parental rights is inconsistent with cultural or family traditions.
- The child may not want parental rights to be terminated; legal guardianship provides permanency while maintaining ties to biological family.
- It is sometimes easier to find a relative to care for sibling groups, special needs children, or older children who may be difficult to place using adoption.
- There is no ongoing state supervision.

Disadvantages

- Because the guardian is not the child's legal parent, the guardian's ability to make permanent, binding decisions on behalf of the child is limited.
- Lack of permanency may cause some concern to the child.
- The biological parents' rights are not necessarily terminated; therefore the parent can come back to court to attempt to undo the arrangement unless specifically disallowed in state law.
- Legal guardianships are inherently less stable and less permanent than adoption.

See Susan L. Brooks, [*The Case for Adoption Alternatives*](#), Family and Conciliation Courts Review, January 2001.

Does placement of a child in a permanent guardianship terminate the parent-child relationship? No. The parent-child relationship will continue to include:

- The right of the child to inherit from his or her parents, §§ 39.621(12)(a), 39.6221(6)(a);
- The parents' right to consent to the child's adoption, §§ 39.621(12)(b), 39.6221(6)(b); and
- The parents' responsibility to provide financial, medical, and other support for the child as ordered by the court. §§ 39.621(12)(c), 39.6221(6)(c).

What must DCF ask me to do if a non-relative placement continues for longer than 12 months? DCF shall request the court to establish permanent guardianship or require that the non-relative seek licensure as a foster care provider within 30 days after the court decision. Failure to establish a permanent guardianship or obtain licensure does not require the court to change a child's placement unless it is in the best interest of the child to do so. § 39.401(5).

➤ **Permanent placement with a fit and willing relative.**

When considering guardianship, some of the advantages and disadvantages are:

Advantages

- Legal guardianship is sometimes better for relative caregivers when termination of parental rights is inconsistent with cultural or family traditions.
- The child may not want parental rights to be terminated; legal guardianship provides permanency while maintaining ties to biological family.
- It is sometimes easier to find a relative to care for sibling groups, special needs children, or older children who may be difficult to place using adoption.
- There is no ongoing state supervision.

Disadvantages

- Because the guardian is not the child's legal parent, the guardian's ability to make permanent, binding decisions on behalf of the child is limited.
- Lack of permanency may cause some concern to the child.
- The biological parents' rights are not necessarily terminated; therefore the parent can come back to court to attempt to undo the arrangement unless specifically disallowed in state law.
- Legal guardianships are inherently less stable and less permanent than adoption.

See Susan L. Brooks, *The Case for Adoption Alternatives*, Family and Conciliation Courts Review, January 2001.

When may the court place a child with a fit and willing relative as a permanent option? If a court finds that reunification or adoption is not in the best interest of a child, the court may place the child with a fit and willing relative as a permanency option if:

- The child has been in the placement for at least the preceding 6 months, § 39.6231(1)(a);

- The relative has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence, § 39.6231(1)(b);
- The relative is suitable and able to provide a safe and permanent home for the child, § 39.6231(1)(c); and
- The relative agrees to give notice of any change in his or her residence or the residence of the child by filing a written document with the clerk of court. § 39.6231(1)(d).

DCF and the guardian ad litem shall provide the court with a recommended list and description of services needed by the child and the family in order to ensure the permanency of the placement. § 39.6231(2).

What must the court include in its written order placing the child with a fit and willing relative?

- The court shall:
 - List the circumstances or reasons why reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact, § 39.6231(3)(a);
 - State the reasons why permanent placement with a fit and willing relative is being established instead of adoption, § 39.6231(3)(b);
 - Specify the frequency and nature of visitation or contact between the child and his or her parents, § 39.6231(3)(c);
 - Specify the frequency and nature of visitation or contact between the child and his or her grandparents under § 39.509, § 39.6231(3)(d);
 - Specify the frequency and nature of visitation or contact between the child and his or her siblings, § 39.6231(3)(e); and
 - Require that the relative not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court § 39.6231(3)(f).

Must the court give the relative a separate order? Yes. The court shall give the relative a separate order establishing his or her authority to care for the child and providing other information the court deems proper which can be provided to entities and individuals who are not parties to the proceeding as necessary, notwithstanding the confidentiality provisions of § 39.202; § 39.6231(4).

DCF shall continue to supervise the placement with the relative until further court order. The court shall continue to review the placement at least once every 6 months. § 39.6231(5).

Each party to the proceedings must be advised by DCF and the court that placement with a fit and willing relative does not preclude the possibility of the child returning to the custody of the parent. § 39.6231(6).

Must the court continue to conduct permanency hearings in order to reevaluate the possibility of adoption or permanent guardianship of the child? Yes. § 39.6231(7).

How does Chapter 39 define “Relative”? Relative is defined as a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece or nephew; whether related by the whole or half blood, by affinity, or by adoption. The term does not include a step-parent. § 39.01(67).

If the child is placed with a relative or a relative of a child’s half-brother or half-sister as a permanency option, the court shall recognize the permanency of this placement without requiring the relative to adopt the child. § 39.621(7).

If the court places the child with a relative or a relative of a child’s half-brother or half-sister as a permanency option and recognizes the permanency of this placement without requiring the relative to adopt the child as required, should the court make findings as to why this permanent placement is established without adoption of the child to follow? Yes. § 39.621(7).

➤ **Another Planned Permanent Living Arrangement.**

If a court finds that reunification is not in the best interests of a child, may the court approve placement of the child in another planned permanency arrangement?

Yes, if:

- The court finds a more permanent placement, such as adoption, permanent guardianship, or placement with a fit and willing relative is not in the best interest of the child, § 39.6241(1)(a);
- DCF documents reasons why the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care, § 39.6241(1)(b);
- The court finds that the health, safety, and well-being of the child will not be jeopardized by such an arrangement, § 39.6241(c); and
- There are compelling reasons to show that placement in another planned permanent living arrangement is the most appropriate permanent goal. Compelling reasons for such placement may include, but are not limited to, the following:
 - The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability, and the child’s foster parents have committed to raising him or her to the age of majority and to facilitate visitation with the disabled parent;
 - The case of a child for whom an Indian tribe has identified another planned permanent living arrangement for the child; or

In determining whether DCF has made reasonable efforts to finalize a permanency plan for a relative placement the court may wish to consider:

- Has DCF made a well thought-out choice and addressed barriers to permanency?
- Is the relative home a means to achieve permanency and not merely a stop-gap solution?
- What will the legal status of the relative placement be?
- Does DCF have a complete picture of the family’s situation?
- What is the relative’s commitment to the child?

See [Making it Permanent](#), p.67, 68, Fiermonte and Renne, 2002.

- The case of a foster child who is 16 years of age or older who chooses to remain in foster care, and the child's foster parents are willing to care for the child until the child reaches 18 years of age. § 39.6241(1)(d)1-3.

DCF and the guardian ad litem must provide the court with a recommended list and description of services needed by the child, such as independent living services and medical, dental, educational, or psychological referrals, and a recommended list and description of services needed by his or her caregiver. § 39.6241(2).

How long shall DCF continue to supervise the planned permanent living arrangement? DCF shall continue to supervise the planned permanent living arrangement until the court orders otherwise. The court shall continue to review the placement at least once every 6 months. § 39.6241(3).

If the court approves a permanency goal of another planned permanent living arrangement, shall the court document the compelling reasons for choosing this goal? Yes. § 39.621(7).

- Placement of a child in another planned permanent living arrangement does not terminate the parent-child relationship, including, but not limited to:
 - The right of the child to inherit from his or her parents;
 - The parents' right to consent to the child's adoption; or
 - The parents' responsibility to provide financial, medical, and other support for the child as ordered by the court. § 39.621(12).

➤ **Continuing Care for Young Adults.**

May a young adult remain in foster care after reaching the age of 18? Yes. A child who is living in licensed care on his or her 18th birthday and who has not achieved permanency under § 39.621 is eligible to remain in licensed care under the jurisdiction of the court and in the care of the department. A child is eligible to remain in licensed care if he or she is:

- Completing secondary education or a program leading to an equivalent credential; § 39.6251(2)(a);
- Enrolled in an institution that provides postsecondary or vocational education; § 39.6251(2)(b);
- Participating in a program or activity designed to promote or eliminate barriers to employment; § 39.6251(2)(c);
- Employed for at least 80 hours per month; § 39.6251(2)(d) OR
- Unable to participate in program or activities listed in 39.6251(2)(a)-(d) full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation. Any such barrier to participation must be supported by documentation in the child's case file or school or medical records of a physical, intellectual, or psychiatric condition that impairs the child's ability to perform on or more life activities. § 39.6251(2)(e).

What is the young adult's permanency goal? The permanency goal for a young adult who chooses to remain in care is transition from licensed care to independent living. § 39.6251(3).

Doesn't section 39.01's definition requires a child to be under the age of 18? Yes, it does. However, as used in section 39.6251, the term "child" means an individual who has not attained 21 years of age, and the term "young adult" means an individual who has attained 18 years of age but who has not attained 21 years of age. § 39.6251(1).

Are there limitations on where the young adult resides? Yes, the young adult must reside in a supervised living environment that is approved by the department or a CBC lead agency. The young adult must live independently, but in an environment in which he or she is provided supervision, case management, and supportive services by the department or lead agency. Such an environment must offer developmentally appropriate freedom and responsibility to prepare the young adult for adulthood. § 39.6251(4)(a).

What types of living arrangements are permitted? A supervised living arrangement may include a licensed foster home, licensed group home, college dormitory, shared housing, apartment, or another housing arrangement if the arrangement is approved by the CBC lead agency and is acceptable to the young adult with the first choice being a licensed foster home. A young adult may continue to reside with the same licensed foster family or group care provider with whom he or she was residing at the time he she reached the age of 18 years. § 39.6251(4)(a).

Are there additional requirements? Before approving the residential setting in which the young adult will live, the department or CBC lead agency must ensure that:

- The young adult will be provided with a level of supervision consistent with his or her individual education, health care needs, permanency plan, and independent living goals as assessed by the department or lead agency with input from the young adult. Twenty-four hour on-site supervision is not required, however, 24-hour crisis intervention and support must be available. § 39.6251(4)(b)(1);
- The young adult will live in an independent living environment that offers, at a minimum, life skills instruction, counseling , educational support, employment preparation and placement, and development of support networks. The determination of the type and duration of services shall be based on the young adult's assessed needs, interests, and input and must be consistent with the goals set in the young adult's case plan. § 39.6251(4)(b)(2).

How long does a young adult remain eligible? Eligibility for a young adult to remain in extended foster care ends on the earliest of the dates that the young adult:

- Reaches 21 years of age or, in the case of a young adult with a disability, reaches 22 years of age. § 39.6251(5)(1);
- Leave care to live in a permanent home consistent with his or her permanency plan; § 39.6251(5)(2); OR

- Knowingly and voluntarily withdraws his or her consent to participate in extended care. § 39.6251(5)(3).
- Withdrawal of consent to participate in extended care must be verified by the court pursuant to § 39.701, unless the young adult refuses to participate in any further court proceeding. § 39.6251(5)

Can a young adult return to care after leaving? Yes, a young adult who is between the ages of 18 and 21 and who has left care may return to care by applying to the CBC lead agency for readmission. The CBC lead agency must readmit the young adult if the young adult continues to meet the eligibility requirements.

- The department must develop a standard procedure and application packet for readmission to care to be used by all CBC lead agencies. § 39.6251(6)(a);
- Within 30 days after the young adult has been readmitted to care, the CBC lead agency must assign a case manager to update the case plan and the transition plan and to arrange for the required services. Updates to the case plan and the transition plan and arrangements for the required services must be undertaken in consultation with the young adult. The department must petition the court to reinstate jurisdiction over the young adult. Notwithstanding § 39.013(2), the court must resume jurisdiction over the young adult if the department establishes that he or she continues to meet the eligibility requirements. § 39.6251(6)(b).

What frequency of contact must be maintained by the CBC lead agency? During each period of time that a young adult is in care, the CBC lead agency must provide regular case management reviews that must include at least monthly contact with the case manager. If a young adult lives outside the services area of his or CBC lead agency, monthly contact may occur by telephone. § 39.6231(7).

Does the court maintain jurisdiction? Yes, during the time that a young adult is in care, the court must maintain jurisdiction to ensure that the department and the lead agencies are providing services and coordinate with, and maintain oversight of, other agencies involved in implementing the young adult's case plan, individual education plan, and transition plan. § 39.6231(8).

Does the court hold any hearings? Yes, the court must review the status of the young adult at least every 6 months and hold a permanency review hearing at least annually. The young adult or any other party to the dependency case may request an additional hearing or review. § 39.6231(8).

May the court reappoint a guardian ad litem? Yes, the court may appoint a guardian ad litem or continue the appointment of a guardian ad litem with the young adult's consent. § 39.6231(8).

Can a young adult appeal a determination of eligibility? Yes, the department must establish a procedure by which a young adult may appeal a determination of eligibility to remain in care that was made by a CBC lead agency. The procedure must be readily accessible to young adults, must provide for timely decisions, and must provide for an

appeal to the department. The decision of the department constitutes final agency action and is reviewable by the court as provided in § 120.68. § 39.6251(9).

➤ **Special immigrant juvenile status.**

If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, may the court retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities? Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under § 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday. § 39.013(2)(d).

➤ **Set the next hearing.**

Notice of a judicial review hearing/citizen review panel hearing, along with a copy of the motion for judicial review, must be served by the clerk on all of the following:

- The social service agency;
- The foster parent or legal custodian in whose home the child resides;
- The parents;
- The guardian ad litem or the Guardian ad Litem Program representative;
- The attorney for the child;
- The child, if the child is 13 years of age or older;
- Any pre-adoptive parent; and
- Such other persons as the court may direct. §§ 39.701(1)(f)(1)-(8).

Service of notice and the motion for judicial review is made regardless of whether the person was present at the previous hearing at which the date, time, and location of the hearing was announced. § 39.701(1)(f).

➤ **Requirements for written order.**

- Ensure that the order clearly sets forth each specific date on which the hearing was held.
- Include findings regarding indigency and appointment or waiver of counsel. § 39.013(9).
- Include findings of whether any relatives who requested notice pursuant to § 39.301(14)(b) submitted a report to the court or spoke to the court regarding the child.
- Make a written determination of whether each caregiver did or did not receive actual notice of the hearing; whether each caregiver appeared at the hearing, either in person or remotely; and whether each caregiver had a meaningful opportunity to be heard, to provide input to the court, and to address the court with any information relevant to the best interests of the child. § 39.502(17) & 39.701(2)(b)3.

- Include specific findings that DCF has made reasonable efforts to finalize the permanency plan that is in effect. 45 C.F.R. § 1356.21.
- Make a written determination of when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child. § 39.621(1).
- Include findings regarding why the recommended goal is in the child's best interests, as necessary. § 39.621(4)(a).
- Include findings regarding "compelling reasons," as necessary. 45 C.F.R. § 1356.21(h)(3).
- Include findings regarding decision as to parent's reunification request or increased visits taking into consideration factors set forth in § 39.621(11). If permanency placement is approved for permanent guardianship, placement with a fit and willing relative, or APPLA, without adoption to follow, findings are required as to why.
- Include specific findings for a permanent guardianship under § 39.6221. See permanency hearing benchcard. The court shall make findings as to why this permanent placement is established without adoption of the child to follow. § 39.621(7).
- Include specific findings for permanent placement with a fit and willing relative under § 39.6231. The court shall make findings as to why this permanent placement is established without adoption of the child to follow. § 39.621(7).
- Include specific findings for APPLA under § 39.6241. The court shall make findings as to why this permanent placement is established without adoption of the child to follow. If the court approves a permanency goal of APPLA, the court shall document the compelling reasons for choosing this goal. § 39.621(7).
- Specify all visitation details in the order.
- Cite the specific provision of § 39.0136 when granting continuances.